EXTRUDED POLYSTYRENE FOAM ASSOCIATION

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September 22, 2003

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: FTC Proposed Rule Comments; 16 CFR Part 460—Labeling and Advertising of Home Insulation

Dear Secretary:

The Extruded Polystyrene Foam Association (XPSA)[1] appreciates the opportunity to comment on planned amendments to the **Labeling and Advertising of Home Insulation** proposed rule promulgated by the Federal Trade Commission (FTC) on July 15, 2003. We appreciate FTC efforts in this matter and believe that the discussion contained in the proposed rulemaking was very thoughtful and balanced. At this time, we believe written comments are adequate to express our views and do not see the need to express our views during a public workshop or hearing.

XPSA would like to offer the following comments in an effort to help FTC achieve its objectives for the proposed rulemaking. In addition, XPSA would like to provide input to some areas where FTC explicitly requested guidance. First, and foremost, XPSA agrees with FTC's objectives, which are:

FTC Rationale for Amending the Rule:[2]

1. Streamline and increase benefits of the Rule to consumers & sellers.
2. Minimize its cost
3. Respond to development & use of new technologies to make American homes more energy efficient & less costly to heat and cool.
4. To clarify, streamline and improve the Rule's requirements.

To achieve these objectives, XPSA believes the following areas merit additional comment. These are:

- Aging of Cellular Plastic Insulations and Appropriate Consensus Standard References
  - Use of ASTM C 1303 as appropriate standard
- Testing Requirements and Alternative Long-Term Test Procedures
  - Mean temperature and temperature differential;
  - R-Value Tolerances--sampling and reporting requirements.
- Labeling, Fact sheet and Advertising disclosure statements;
- Disclosing thermal performance in commercial insulation applications;

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[1] The Extruded Polystyrene Foam Association (XPSA) is a trade association representing manufacturers of Extruded Polystyrene Foam (XPS) insulation products and the industry's raw material suppliers. XPSA members include: The Dow Chemical Company, Owens Corning, and Pactiv Corporation, which collectively manufacture more than 95 percent of all XPS insulation products sold in the North American market. XPSA conducts industry-wide research; addresses regulatory and legislative challenges; and serves as the industry spokesperson to promote the benefits that accrue to society from appropriate use of XPS foam insulation applications.

2 Pg. 4182, Federal Register/Vol. 68, No. 135, Tuesday, July 15, 2003

Long-Term Thermal Resistance of Cellular Plastic Insulations and Appropriate Consensus Standard References

Use of ASTM C 1303 and Comments Requested by the Commission on this Subject—XPSA agrees with FTC in retaining the requirement to report R-value at 180-days until such time as ASTM C 1303 and Canadian standard CAN/ULC S770 gain broader acceptance and the bias issues related to S770 are fully addressed. ASTM C 1303 and CAN/ULC S770 are intended to predict long-term performance of unfaced, or permeably-faced products which encompass only a small percentage of residential products. FTC should also note that one C 1303 or S770 test costs about $5,000 per test to run which would add a significant cost burden to the manufacturing companies. Only two or three third-party test laboratories are capable of performing these tests which are extremely cumbersome and time consuming.

Residential Market Information Requested by the Commission—FTC asked for information and comments about the residential market break-out of faced vs. unfaced foam insulation products. A large part of the XPS industry's residential insulation sales involve exterior insulative sheathing products. In the residential market, XPS can report that about 70% of its sheathing insulation products sold into this market are faced, and about 30% are not faced. It is also important to note that one of our members also manufactures polyisocyanurate insulation products, and this company estimates that 50 to 70% of the sheathing market uses impermeably-faced polyiso insulation products. Therefore, the current LTTR standards do not cover the majority of the residentially-marketed products. We understand and agree with the Commission's position not to require the use of a long term thermal resistance (LTTR) value in the current rulemaking.

Referenced Standards: Addition of ASTM C 1289—It must be emphasized that the list of referenced standards to which each foam plastic segment must test is seriously deficient. FTC has indicated that it does not intend to reference the current version of ASTM C 1289 as an appropriate standard [3]. XPSA fully understands and agrees with the FTC's reluctance to use the current version of this standard due to its reference to an outdated and modified version of Canadian Standard S770 and the uncertainties (*i.e.,* bias) that standard-developers of S770 are now addressing. However, XPSA strongly believes that omitting any reference to C 1289 will leave each polyiso manufacturer to determine its own "other reliable procedure[s]" (*i.e.,* alternative test method) for impermeably-faced products and will result in an un-level playing field in the market place. In general, the XPS industry is opposed to the sanctioning by the Commission for use of "other reliable procedures" to determine long-term R-value.

The Commission issued the R-value Rule to prohibit, on an industry-wide basis, specific unfair or deceptive acts or practices. Specifically, the Rule mandates that the required R-value tests for polyurethane, polyisocyanurate, and extruded polystyrene insulation products be conducted using a common aging criteria, namely 180 days.

To these ends we believe the Commission must adopt and require the use of ASTM C 1289-98 (*i.e.,* 1998 version) as the standard to which polyiso manufacturers must comply for testing of impermeably-faced products. Without it, polyiso manufacturers will be at a competitive advantage to all other segments of the foam plastic insulation industry because the lion's share of the product sold into the residential market will be governed by a non-consensus standard test method. In other words, these products will have to be tested by "another reliable procedure[s]". Furthermore, this standard was the version in use at the time Celotex, a polyisocyanurate

[3] Pg. 41882, Federal Register/Vol. 68, No. 135, Tuesday, July 15, 2003

manufacturer, recommended its use in its comments to the Advanced Notice of Proposed Rulemaking in 1999 as the reference standard for the polyiso industry.[4]

The only way the proposed rule will truly assist those who want to compare various R-value claims of manufacturers and assist the specifier in designing the best R-value for a given application is to include ASTM C 1289-98 as the reference standard for polyisocyanurate foam products. The rationale for our advocacy of using the "1998" version is: 1) all residential polyiso foam insulation products are covered by this standard; and 2) it levels the playing field for the product aging criteria through the required use of 180-day aging or 90-day at 140° F. It is important to note that this standard was successfully used by the Polyisocyanurate industry in the past. And, more importantly, the thermal resistance values it yields would provide for an apples-to-apples comparison between products blown with HCFCs and those now blown with hydrocarbons. This comparison is essential for consumers to evaluate competitive claims made that compare past long-term R Value of products blown with HCFCs, using ASTM C 1289 or the RIC/TIMA conditioning procedures to those products now blown with hydrocarbons. As it stands now, the comparison is between long-term R-value for HCFC-blown products as tested by ASTM C 1289-98 to the long-term R-value of products blown with hydrocarbons, as tested under the current version of ASTM C 1289-02, which relies upon a modified (and substandard) test method taken from Canadian standard S770. This comparison is misleading and serves to confuse the residential home owner or buyer of these products.

Thin-Slicing and FTC Request for Comments—Regarding thin-slicing and where this issue sits today—it is important to note that most residential foam plastic insulations have gas impermeable facers which cause them to fall outside the scope of either CAN/ULC S770 and/or ASTM C1303. Gas impermeable facers do not completely stop the transfer of gases but they slow it down enough so that these test methods are not able to predict long-term performance at the present time.

Approximately 70 % of extruded polystyrene foams and 50% to 70% of polyisocyanurate foam products used in residential construction have these impermeable facers.

Most residential foam insulation boards are also one inch or less in thickness. This is because most of our industry's residential product sales are for exterior sheathing products. In fact, the average thickness in the XPS industry for sheathing products is .625". The focus (and best accuracy) of these LTTR test methods is on thicker products (2 inches and greater) and is less applicable to thinner products, especially those less than one inch in thickness.

In summary, XPSA still advocates that all cellular foam manufacturers provide and report 180-day thermal performance data for their products as tested by the reference ASTM standards.

Testing Requirements and R-Value Tolerances

Mean Temperature—Specifically, XPSA supports the Commission's proposed amendment regarding the reasons for requiring thermal resistance testing using a mean temperature of 75° F. We agree that, consumers will benefit from consistent reporting of R-values at a standardized test temperature. As the Commission accurately states, insulation manufacturers are not restricted from including reference to R-values at other mean temperatures as long as they include R-values obtained at a 75° F mean temperature.

[4] Footnote 36, "Celotex (7), p.2. at pg. 41881 Federal Register/Vol. 68, No. 135, Tuesday, July 15, 2003

Temperature Differentials—Regarding the temperature differential issue, we applaud FTC's proposed amendments to adopt a temperature differential of 50°F ± 10°F as the best way to ensure standardized testing practices. XPSA agrees with FTC, and thanks it for proposing this important test parameter.

R-Value Tolerance and Sampling Requirements—XPSA agrees with FTC's intent to amend Sec. 460.8 of the Rule to clarify that the tolerance limit applies to manufacturers and the manufacturing process (not to installation). Further, our industry also agrees with the requirement that the mean R-value of sampled specimens of a production lot meets or exceeds the R-value shown in a label, fact sheet, ad or other promotional material for that insulation. XPSA thanks FTC for giving flexibility to manufacturers for complying with this section by defining the term "production lot"[5] in a manner conducive to a company's quality assurance procedures. XPSA also appreciates FTC's intent not to require a specific testing schedule. Re-testing on a new schedule would be very time-consuming and costly. By ruling in this way regarding these two aspects, the Commission has given sufficient flexibility and thereby has minimized the cost of compliance with this section.

In addition, the XPS industry agrees with the second part of the proposed amendment's requirement that the mean R-value of sampled specimens of a production lot must meet or exceed the R-value shown and no individual specimen of that insulation may have an R-value more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. XPSA agrees with the Commission that these changes will help clarify existing requirements and foster consistency in the application of the tolerance provision and ultimate reporting of actual R-Value claims.

Labeling Requirements—XPSA further agrees with the Commission that sufficient information should be supplied to the consumer to allow for R-value comparison, but too much information may have the opposite effect. Sometimes, less is more—particularly when it comes to labeling. However, this view must be tempered if the information supplied does not fully-capture the R-value that the consumer believes he or she is getting.

Actual R-Value performance is affected by moisture absorption, proper installation, air permeability and other environmental and installation factors. For example, certain faced insulation products depend on the facer to limit blowing agent loss. The loss of blowing agent results in a lower claimed R-value for the product. Since the Commission has chosen not to regulate the effects of such environmental variables on R-value, XPSA concurs that current labeling and disclosure requirements for insulation boardstock products is sufficient and changes are not warranted.

Advertising and Insulation Ads—XPSA concurs with the Commission's intent to relax the disclaimers required for radio and television advertising.

Application of Rule to Commercial Building Markets—Philosophically, XPSA supports extending the regulatory framework embodied in the "Labeling and Advertising of Home Insulation" to insulation intended for commercial buildings. Applications involving insulation systems require that the specifier possess a working knowledge that extends well beyond simply understanding the R-value of the insulation. We believe this issue should be reserved for a separate rulemaking in the future. This will allow the Commission and the regulated community time to implement any changes forthcoming from the proposed amendments and provide additional time to monitor the proposed amendments' impact, if any, on the home consumer audience.

[5] FTC has defined "production lot" to mean a "definite quantity of the product manufactured under uniform conditions of production." Pg. 41888, Federal Register/Vol. 68, No. 135, Tuesday, July 15, 2003

It is still this industry's belief that many specifiers and architects do not fully understand the technical basis and testing procedural aspects on which standardized FTC disclosure requirements contained in the R-value Rule rely. Mostly, they rely solely on manufacturers' claims and Fact Sheet information when preparing specifications involving foundation, wall or roof systems. XPSA frequently receives calls from specifiers and architects wanting more information about how to properly compare insulation types. Based on these calls, it is XPSA's opinion that long-term R value is often an issue about which architects and specifiers are not very conversant.

Building systems are typically designed to take into account the thermal resistance of the insulation, as well as the contribution of heating and cooling equipment (HVAC), other building components, such as fenestration etc., and other materials used in conjunction with the insulation to achieve an overall building performance. In this regard, architects and specifiers know what R-value for a particular building, component, or component system they must achieve and specify an insulation product based on the manufacturer's representation of such.

Improper installation, environmental factors, facers, when and where they exist, all affect R-value in different ways for different products. It is nearly impossible for an architect or specifier to keep up to date with the technical data underlying such R-value claims. Therefore, while XPSA philosophically supports extending this rule to commercial applications, it should be noted that XPSA must add the caveat that it may not have any benefit unless other aspects of this rulemaking (i.e., long-term aging requirements and proper disclosure elements) are satisfactorily addressed. Without implementing guidelines designed to ameliorate these issues, applying the R-value rule to commercial applications will only add cost to the manufacturer without achieving any benefit.

XPSA again commends the FTC for engaging the industry in this Proposed Rulemaking for the Labeling and Advertising of Home Insulation amendments. I may be contacted at 703/730-1601, if the Commission or FTC staff representatives have any questions or if we can be of further assistance.

Respectfully yours,

Susan Herrenbruck
Executive Director